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**APPLICATION OF**

**WASHINGTON GAS LIGHT COMPANY AND  
SHENANDOAH GAS DIVISION OF  
WASHINGTON GAS LIGHT COMPANY**

**CASE NO. PUE-2002-00364**

**For a general increase in natural gas rates  
and charges and approval of performance-  
based rate regulation methodology pursuant  
to Va. Code § 56-235.6**

**HEARING EXAMINER'S RULING**

**August 16, 2002**

On June 14, 2002, Washington Gas Light Company ("WGL" or the "Company") filed an application requesting authority to increase the rates and charges for natural gas service for WGL and its Shenandoah Gas Division ("Shenandoah" and collectively, the "Companies"). The application also requests authority to merge the rates, terms and conditions, and purchased gas charges of the Companies and approval of a performance-based methodology pursuant to Virginia Code § 56-235.6.

Staff submitted a Pre-Audit Data Request, Question #4, requesting the Company to provide a copy of "all Board of Directors minutes for the test period and the prior twelve months." The test period for this case is the twelve months ended December 31, 2001, and therefore the Staff request relates to the minutes for calendar years 2000 and 2001.

WGL objected to the request on the grounds that the requested information is confidential, but it offered to make a copy of a redacted version of the minutes available for review upon execution of a confidentiality agreement. WGL represented that it intended to redact only "very limited portions that relate to strategic matters for unregulated businesses,...since that information is not relevant to this proceeding." Staff filed a motion to compel on July 30, 2002. WGL responded to the motion on August 8, 2002, and on August 12, 2002, Staff replied to that response.

In its motion Staff asserts that the Commission has the authority under §§ 56-36 and -249 of the Code of Virginia to inspect the books, papers, and documents of all public service companies doing business in this Commonwealth and to require from such companies, from time to time, special reports and statements, made under oath, concerning their business. Staff contends that in the past it has had complete access to the Companies' Board of Directors' minutes, and that it has been a valuable informational resource leading to the discovery of changes in investment strategy affecting risk to the Companies, changes in accounting and booking practices, allocations of costs, revenues, and investments among WGL and its affiliates, as well as WGL's regulated and non-

regulated activities. Staff argues that access to a complete and unredacted copy of the minutes for the years ending December 31, 2000 and 2001 is particularly critical in light of the Commission's grant of approval on May 11, 2000<sup>1</sup>, to WGL to reorganize its corporate structure and create a holding company. Indeed, Staff cites Ordering Paragraph (14) of the Order Granting Approval which reserves the Commission's right to examine the books and records of any WGL affiliate in connection with the authority granted by the Commission whether or not the Commission regulates that affiliate. Staff recognized that the minutes may contain sensitive data and refers to Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure which permits information to be filed with the Commission Staff counsel under seal.

The Company suggests that Staff first review the redacted volume of minutes that the Company will make available to Staff during the audit scheduled for the week of August 15-19. In the alternative, the Company offered the unredacted minutes for *in camera* inspection by the Hearing Examiner. The Company asserts that its structure of the Company has changed substantially since the last rate case, and that has affected the nature of materials subject to Staff review. WGL contends that the creation of the holding company was based in large part on a desire to separate the regulated and unregulated businesses of the Companies. The limited portion of the minutes that WGL seeks to redact relates to its unregulated businesses. WGL asserts that the Code sections<sup>2</sup> that give the Commission the power to inspect or otherwise access certain books, papers, documents, accounts and reports, specifically refer to "public service companies" and "public utilities." Moreover, WGL contends that Paragraph (14) of the Commission's order approving the formation of the holding company assures continuing jurisdiction over affiliate transactions but not over matters unrelated to affiliate transactions. It asserts that the limited portions of the minutes that it intends to redact do not relate to affiliate transactions, but rather to "strategic directions for unrelated businesses" and a "strategic discussion on Primary Investors L.L.C." It thus contends that the information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. It argues that sensitive strategic discussions that are unrelated to affiliate transactions are not the subject of the rate case, and therefore, should not be subject to Staff or Commission scrutiny.

In reply, Staff reiterated that the broad grants of authority to the Commission in Sections 56-36 and -249 of the Code of Virginia require reports on the entire operation of a public utility and do not distinguish between the regulated and non-regulated portions of the business. Staff asserts that in actuality, the unregulated operations of a utility and its dealings with affiliates often affect the risk the market assigns to the utility and raise issues as to whether proper allocations of costs and revenues are being made between the unregulated and regulated portions of the utility's operations. Staff also emphasized that it

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<sup>1</sup> *Application of Washington Gas Light Company and its Affiliated Interests, For approval of transactions under the Code of Virginia of 1950, as amended, Title 56, Chapters 4 and 5, related to the formation of a holding company*, Order Granting Approval, Case No. PUA-2000-00010, 2000 S.C.C. Ann. Rep. 165 (May 11, 2000).

<sup>2</sup> Virginia Code §§ 56-36 and -249.

is currently seeking access to the minutes of only the WGL Board of Directors' meetings, and not those of the holding company.

I am persuaded that WGL should be compelled to produce the unredacted minutes of the WGL Board of Directors' meetings for the years ending December 31, 2000 and December 31, 2001. Virginia Code § 56-36 clearly provides that the Commission has the right to inspect the books and records of a public service company. WGL is a public service company. The statute does not limit access to regulated activities. Similarly, under § 56-249 the Commission may require any public utility such as WGL, to provide in such detail as the Commission shall require "information of whatsoever kind or character as it may deem proper...." The scope of the Commission's access is thus far broader than WGL argues. Access is not limited to only regulated activities. Indeed, as Staff explained, unregulated activities can have an effect on regulated activities and therefore such an inquiry in the context of a rate case for the regulated portion of the business is imminently proper. I concur with Staff's contention that access to this information is particularly important since this is the first rate case following the corporate restructuring and the formation of the holding company. Moreover, at a time when corporate financial reporting is under close public scrutiny, it is even more incumbent upon the Commission to assess whether financial information about the Company that is publicly available is reliable, evaluate whether the Company has made booking changes, and assess whether unregulated strategies will affect risk to the regulated portions of the Company. Staff recognized that the minutes may be confidential. However, the Commission's Rule 5 VAC 5-20-170 of the Rules of Practice and Procedure provides a procedure for producing such documents to Staff.

Accordingly, I find the Staff motion to compel should be granted. WGL is hereby **COMPELLED** to produce forthwith the minutes as requested by Staff in Question #4 of its Pre-Audit Data Request dated July 1, 2002.

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Deborah V. Ellenberg  
Chief Hearing Examiner